

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and OptumInsight, Inc. (hereafter called the "Contractor") that the contract on the subject of Evaluation and Remediation & Operations Support for the Vermont Health Connect, effective June 9, 2014, is hereby amended effective August 13, 2014, as follows:

1. By deleting Section 3 (Maximum Amount) on page 1 of 40 of the contract, and substituting in lieu thereof the following Section 3:

3. Maximum Amount. In consideration of the services to be performed by Contract, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$15,133,939.

2. By deleting the Stream 3 scope of services set forth in section of II of Attachment A on pages 7-8 of 40 of the contract and substituting in lieu thereof the following Stream 3 scope of services:

Stream 3. Supplemental Operations Support

The Contractor shall provide operational support to reduce the backlogs caused by system deficiencies to normalized levels. This reduction shall be accomplished no later than September 30, 2014. The Contractor, in consultation with the State, shall develop a work plan to define the services and staffing levels needed to accomplish backlog reduction as required by this Contract. The work plan shall identify priorities and scheduling.

After the work plan is accomplished in the paragraph above but before any work on Stream 3 may begin, the State shall approve a Task Order submitted by the Contractor in the form set forth in Exhibit 1 to this Attachment A, in accordance with the process as further described in Attachment B. Task Orders shall be approved and initialed by the State contract review team identified in Attachment B, Section 4. After this approval process is complete, the State's Authorized Representative, the DVHA Business Office and the Contractor shall execute the Task Order prior to work commencement. Stream 3 Task Orders as signed by the parties are hereby incorporated by reference into this Contract. The Contractor shall organize and deliver Operational Support Services in the following areas as defined in the applicable Task Order:

1. Backlog Reduction: The Contractor shall perform the services listed below to develop an appropriate plan to eliminate identified backlogs:
 - Change of Circumstance
 - Determine training, systems requirements and transaction cycle time from VHC Operations team
 - Plan supporting how hours will be used to work the backlog prior to automation
 - Coordinate with the State and VHC Contractors for systems access by the Contractor
 - Conduct training sessions related to backlog (product, process and systems)
 - Deploy appropriate resources to achieve completion date of September 30th for complete reduction of backlog

- Other backlogs, as they are identified within the assessment performed in Stream 2, will be scoped and modeled out using Change of Circumstance backlog reduction approach.
- 2. Escalations: the Contractor shall perform the following services to remediate or augment the current escalation capability within VHC:
 - Create Escalation procedure manual that documents escalation process and remediation steps
 - Provide adequate staffing to manage the workload
 - Create Enterprise Escalation Workflow Tool
 - Conduct feasibility assessment
 - Facilitate requirements gathering with VHC team and appropriate escalation tool users
 - Build out and deploy enterprise tool

Contractor shall deliver the Escalation procedure manual and Workflow tool to the State.

- 3. Business Process and Support: the Contractor shall provide the following services to document existing issues and build redundant capacity to support critical activities:
 - In consultation with the VHC team (current contracted and state staff), Contractor shall document appropriate workaround instructions identified during assessment. Provide document with current workarounds (after edits, deletions and adds) as well as sufficient training to allow Customer Support Center and State teams to perform workarounds;
 - Create Operational Manual by monitoring daily work and interviewing each subject matter expert (SME). Subsequently, the Contractor shall document each SME's responsibilities. Contractor shall test the Manual by having a Business Analyst (BA) perform the work function. The SME can validate and approve the work instructions.
 - Provide adequate staffing to manage the workload for identified areas of opportunity (i.e., eligibility and enrollment, plan management, 834, and SHOP SMEs).
 - The Contractor shall facilitate training to be performed by State staff on the Operational Manual, as approved by the State.
- 4. Renewal/2015 Open Enrollment Readiness: the Contractor shall perform the services listed below to develop an appropriate plan to support VHC readiness for annual renewals and 2015 Open Enrollment:
 - Make recommendations for handling consumers seeking to renew insurance through VHC; Coordinate Open Enrollment strategy and facilitate readiness plan to ensure VHC team, including the Customer Support Center, has well defined, documented processes and adequate staff to support anticipated volume.
 - Provide Marketing support, if deemed necessary and approved via a Task Order
- 5. Call Center Operations: the Contractor shall perform the services listed below to assist the Customer Support Center:
 - Consult with Customer Support Center on end-of-year forecast for accuracy and staffing approach
 - Provide efficiency plan for improved consumer experience, including Interactive Voice Response (IVR), Customer Response Management (CRM) and other identified opportunities

- Build out training curriculum with updated processes and any workarounds

The Contractor shall provide operational support to reduce the Change of Circumstance backlogs caused by system deficiencies to regular ongoing application volume no later than September 30, 2014.

3. By deleting the Stream 4 scope of services of Section II of Attachment A on pages 8-9 of 40 of the contract and substituting in lieu thereof the following Stream 4 scope of services:

Stream 4. IT Project Management and Delivery

In accordance with Section III of this Attachment A, as set forth below, the Contractor shall provide a dedicated Program Manager and project management team to support the State in implementing the approved technology assessment recommendations and in providing ongoing oversight of and discipline to the VHC program.

Before any work on Stream 4 may begin, the State shall approve a Task Order submitted by the Contractor in the form set forth in Exhibit 1 to this Attachment A in accordance with the process as further described in Attachment B. Task Orders shall be approved and initialed by the State contract review team identified in Attachment B, Section 4. After this approval process is complete, the State's Authorized Representative, the DVHA Business Office and the Contractor shall execute the Task Order prior to work commencement. Stream 4 Task Orders as signed by the parties are hereby incorporated by reference into this contract.

Contractor's core team may be supplemented with the following subject matter experts:

- Release managers to oversee in-flight and future releases;
- Quality assurance lead and testers focused on testing practices, test facilitation, and support in the creation and execution of test cases;
- Technical writers focused on evaluating existing documentation and developing missing documentation; application architect/software engineer to oversee technical decisions and practices; business and technical resources to perform requirements definition, system design.
- Infrastructure engineer to provide guidance on performance, tuning, etc., O&M SME focused on overall CGI activities and service level monitoring; and support for VHC oversight of CGI contract. The number of SMEs and their time commitment will be refined based on the results of Stream 1 and in consultation with the State team. The Contractor shall supply the State with a team to provide oversight and support and staffing as necessary and defined by Task Order in the following areas:
 - IT development
 - Security development
 - Testing (including Unit, Integration, System, Functional testing, and User Acceptance Testing)
 - Release management (including process of code promotion to live environment, defect management)
 - Training and documentation
 - Overall contract compliance, invoice approval, etc.
 - Using the subject matter experts noted above Contractor will participate in knowledge transfer from CGI participate in knowledge transfer from CGI security

management.

The Contractor shall lead a process to modify the product delivery plan, as necessary, in conjunction with CGI and existing subcontractors and the State, to ensure that adequate time is available for both the delivery of high-quality software that is thoroughly tested, and has appropriate security controls, and adequate time for the State team to perform training and other operational readiness activities. The Contractor shall assist the State with the proactive management of the VHC, CGI, and all subcontractors, to deliver according to planned timeframes; and shall facilitate work sessions as necessary to mitigate delays. To facilitate its IT project management and delivery support activity, the Contractor shall:

- Ensure 100% transparency of project information management (scope, schedule, and resource allocations).
- Collect, analyze and communicate status, risks and issues and proposed resolution to State leadership.
- Perform daily stand-up morning assignments and evening checkouts, identify risks and remediate daily.
- Provide technical expertise to evaluate quality through informal software demonstrations, document existing architecture, and identify gaps and risks.
- Provide testing expertise to develop test scenarios (unit tests, feature tests, regression tests, and or end-to-end tests) as necessary to ensure adequate test coverage and verify results.
- Ensure that documentation is up-to-date and comprehensive and that end user training is conducted in a timeframe that facilitates successful go-live for remaining code drops. Review backlog of Change Requests to confirm SOV prioritization and confirm the level of effort and cost estimates provided by the State's system integrator.
- Provide to the State an evaluation of all the tests in the regression suite and confirmation of test results.

The services identified in the Task Order for Stream 4 shall be provided to the State in accordance with the Task order, but no later than September 30, 2014.

4. By deleting Section 4 of Attachment B on page 12 of 40 of the contract and substituting in lieu thereof the following Section 4:

4. The State shall have no obligation to initiate work Stream 3 or 4 and may, in its sole discretion decline to initiate either or both.

The State may initiate work under Streams 3 and 4 by requesting Task Order proposals from the Contractor. Each Task Order proposal shall be set forth in the form Attached as Exhibit 1 to Attachment A and shall include the following:

1. Project Contact
2. Type of Activity
3. Project Goal(s)
4. Brief Description of Project
5. Project Deliverable(s)
6. Estimated Project Duration/Phasing
7. Description of Expected Timeline of Project
8. "Not to Exceed" Budget

Upon the State's consideration of the Task Order proposal, and before any work may begin, the State shall review and accept or reject the Task Order. One accepted, it shall be submitted to the Contractor for execution. Both parties have the right to submit modifications or reject any Task Order. Task Orders shall be approved and initialed by the State contract review team consisting of authorized representatives at DVHA, Office of the Attorney General, Agency of Human Services (AHS), Department of Information and Innovation (DII), and Agency of Administration (AoA). After this approval process is complete, the State's Authorized Representative, the DVHA Business Office and the Contractor shall execute the Task Order prior to work commencement. Each Task Order must be signed by both parties before any work shall begin. Excluding the Specification of Work descriptions in Attachment A, and the maximum amount payable with respect to Streams 3 and 4, no Task Order entered into hereunder shall in any way amend, conflict with or supersede this Contract and any such provisions of a Task Order which purport to amend, conflict or supersede this Contract shall be void and have no effect. The parties acknowledge and agree that it is the intent of the assessments performed in Stream 1 and Stream 2 to establish the specific Specification of Work required to be performed in Stream 3 and Stream 4. The pricing set forth in Attachment B with respect to Stream 3 and Stream 4 may be increased or reduced, and milestone payments established as the parties may agree in a Task Order once the assessments in in Streams 1 and 2 have been performed. The terms and conditions of each Task Order shall be incorporated herein.

The State will not pay for services that are not previously approved in a Task Order by both authorized representatives listed within this section. The State Authorized Representative and the DVHA Business Office have final authority over whether a Task Order is initiated under this Contract. Changes to a Task Order shall be accomplished by written modification as agreed to by both parties and will be reflected in an amended and restated Task Order.

State Authorized Representatives:

Emily Trantum, Procurement Manager
Role: Contract Administrator
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
emily.trantum@state.vt.us

Lindsey Tucker, Deputy Commissioner
Role: Contract Manager
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
lindsey.tucker@state.vt.us

All notifications by the State shall be submitted to Contractor's Director of Accounting:

Authorized Contractor Representative:
Brian Holcomb, Director of Accounting
OptumInsight, Inc.

13625 Technology Drive, Eden Prairie, Minnesota, 55344
Brian.holcomb@optum.com

Kathlyn Wee, Senior Vice President
Optum Government Solutions
kathlyn.wee@optum.com

All Deliverables/Payment Milestones shall be delivered to the State in accordance with this Agreement and the applicable Task Order. The State will have 10 business days to review and accept all reports, plans and deliverables under this Agreement. Should the State require revisions to submitted reports, plans or Deliverables, the Contractor shall be notified by the 10th business day of any revisions. The 10 day State review period shall begin the day after receipt of the Deliverable specified in this Agreement and any applicable Task Order. The Contractor shall not submit an invoice for any Deliverables required under this Agreement or any applicable Task Order until it has received written notice of acceptance of the Deliverables by the State.

5. By deleting Section 1 of Attachment B on page 12 of 40 of the contract and substituting in lieu thereof the following Section 1:

1. The total maximum amount payable under this Contract shall not exceed \$15,133,939. All rates set forth in this contract are all-inclusive; no expenses, benefits or insurance will be deemed reimbursable to the Contractor by the State under this Contract.

Stream	Services	Deliverable Due Date	Amount
Stream 1	IT Plan	July 3, 2014	\$497,663
Stream 2	Operations Stabilization Plan	June 27, 2014	\$117,875
Stream 3	Supplemental Operations Support	Via Task Order	\$8,139,453*
Stream 4	IT Project Management and other Stream 4 Services	Via Task Order	\$6,378,948*
Total			\$15,133,939

* Time and materials, dependent on task order

6. By deleting Attachment C on page 16 of 40 of the contract and substituting in lieu thereof Attachment C, which is included as a part of this amendment on page 8.

7. By deleting Attachment D on page 20 of 40 of the contract and substituting in lieu thereof Attachment D, which is included as a part of this amendment on page 12.

8. Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

**STATE OF VERMONT
AMENDMENT TO PERSONAL SERVICES CONTRACT
OPTUMINSIGHT, INC.**

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CONTRACT #26801
AMENDMENT #1**

9. Certification Regarding Suspension or Disbarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

This amendment consists of 23 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#26801) dated June 9, 2014 shall remain unchanged and in full force and effect.

STATE OF VERMONT

CONTRACTOR

DEPARTMENT OF VERMONT HEALTH ACCESS

OPTUMINSIGHT, INC.

MARK LARSON, COMMISSIONER
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Mark.Larson@state.vt.us

DATE

PAUL EMERSON, VP FINANCE
13625 Technology Drive
Eden Prairie, MN 55344
Phone: 952-917-7002
Email: paul.emerson@optum.com

DATE

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of \$ 1,000,000 per occurrence, and \$ 3,000,000 aggregate.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a

single audit is required for the prior fiscal year. If a single audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the

time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

- 14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:
- is not under any obligation to pay child support; or
 - is under such an obligation and is in good standing with respect to that obligation; or
 - has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**ATTACHMENT D
MODIFICATION OF CUSTOMARY PROVISIONS
OF
ATTACHMENT C OR ATTACHMENT F**

1. The requirements contained in Attachment C, Paragraph 1, are modified to add the following sentence:

Entire Agreement. In the event that one or more provisions of this contract are found to be invalid, unenforceable or illegal by a Court of competent jurisdiction, the remaining terms shall remain in full force and effect.

2. The requirements contained in Attachment C, Paragraph 4, are modified to amend the following paragraph:

Appropriations: In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State agrees to give notice to the Party within two business days after a non-funding event. This Agreement shall immediately terminate upon the Party's receipt of this notice and the State shall make payments for services rendered prior to the notification of the non-funding event.

3. The requirements contained in Attachment C, Paragraph 6, are modified to add the following:

Independence, Liability:

The Party shall not be responsible for the indemnity of the State to the extent damages or losses arise from the acts or omissions of the State, its officers or employees, including the State's unauthorized or inappropriate use of or modifications to the deliverables under this Contract.

Limitation of Liability:

CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH STREAMS 1 AND 2 OF THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED TWO (2.0) TIMES THE AGGREGATE MAXIMUM CONTRACT AMOUNT PAYABLE FOR STREAMS 1 AND 2. TO THE EXTENT THE STATE ELECTS TO PROCEED WITH STREAMS 3 AND/OR 4, CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED TWO (2.0) TIMES THE AGGREGATE MAXIMUM CONTRACT AMOUNT AS THE SAME MAY BE MODIFIED FROM TIME-TO-TIME. CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH A NOTIFICATION EVENT, AS DEFINED HEREIN, SHALL NOT EXCEED \$2 (TWO) MILLION DOLLARS.

CONTRACTOR SHALL NOT BE LIABLE TO THE STATE FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, OR DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY OR LOSS OF ANTICIPATED BUSINESS OR PROFITS IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

THE FOREGOING LIMITATIONS SHALL NOT APPLY TO STATE CLAIMS ARISING DIRECTLY OUT OF (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE FOR COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT; (B) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (C) THE CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE, OTHER THAN A NOTIFICATION EVENT OR (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR VIOLATIONS OF LAW CONSTITUTING MISCONDUCT.

4. The requirements contained in Attachment C, Paragraph 7, are substituted with the following language:

Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Per Occurrence
- \$5,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$5,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain Technology Professional Liability

insurance for any and all services performed under this Agreement, with minimum third party coverage of \$1,000,000 per claim, \$5,000,000 aggregate.

5. To the extent Contractor determines itself to be a "subrecipient" for purposes of the federal government's Annual Report and single audit requirements (i) for fiscal years ending before December 25, 2015, contractor shall comply with OMB Circular A-133; and (ii) for fiscal years ending on or after December 25, 2015, Contractor shall comply with 2 CFR Chapter I, Chapter II, Part 200, Subpart F.
6. The requirements contained in Attachment C, Paragraph 10, are modified to add a clause to line two (2) of the following paragraph:

Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to the cost incurred or the prices paid by State under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

7. The requirements contained in Attachment C, Paragraph 13, are modified to add the following clause.

Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items.

8. The requirements contained in Attachment C, Paragraph 15 are modified to add the following sentence:

Sub-Agreements: Notwithstanding the foregoing, Party may utilize staff-augmentation contractors or staff from Affiliates in the ordinary course of business, and in every such instance, prior written approval of the State shall not be required. Party shall be responsible for liability arising from the acts or omissions of such contractors, affiliates and other agents.

9. In addition to the standard terms and conditions in Attachment C, the parties agree to the following terms with respect to the confidentiality of information and security breach notice:

Confidentiality of Contractor Information: The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Records Act, 1 V.S.A. § 315 et seq. (the "Act"). The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Act. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information.

The State acknowledges that in the course of performing under this Agreement, or in the course of discussing or negotiating future agreements between the parties, the State may learn "Contractor Confidential Information". Except as otherwise provided in the applicable laws of the State of Vermont, "Contractor Confidential Information" means information, whether presented orally or in writing, and whether or not marked as "confidential" or "proprietary," including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors which do not know it or use it.

The State agrees that (a) it will use the Contractor Confidential Information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor Confidential Information as it provides to protect its own similar confidential and proprietary information; except as required by the Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Agreement; (d) it will take all reasonable precautions to protect the Contractor's Confidential Information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor shall affix an appropriate legend to Contractor Confidential Information that is provided under this Agreement to reflect the Contractor's determination that any such information is Contractor Confidential Information, which means either it is marked as "confidential" or "proprietary" at time of delivery or for information that is disclosed orally or visually, it is designated "confidential" or "proprietary" at the time of disclosure.

The Contractor agrees that such designation shall not prevent the State from complying with the Act.

Confidentiality of State Information. In performance of this Contract, and any Attachment or Exhibit hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. In addition to the provisions of this Section, the Party shall execute the HIPAA Business Associate Agreement attached as Attachment E. Before receiving or controlling State

Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract ("State Data"). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall use State Data only for the purposes of and in accordance with this Agreement. The Contractor shall provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information. The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

The Contractor shall follow the existing Vermont Health Connect (VHC) control framework during the term of this Agreement including industry standard administrative technical, and physical safeguards and controls consistent with *NIST (National Institute of Standard and Technology) Special Publication 800-53* (Rev.3 or higher) and *Federal Information Processing Standards Publication 200* which are designed to (i) ensure the security and confidentiality of State Confidential Information; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data and; (iii) protect against unauthorized access to or use of State Data. The Contractor will utilize VHC technical measures to include at a minimum: (1) access controls on information systems, including multiple levels of authentication controls to permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) access VHC information systems through a secure encrypted network connection to State networks where provided by VHC; (4) follow technical controls prohibiting the ability to save or to store State Data ; (5) follow VHC dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Confidential Information; (6) measures to ensure that the State Confidential Information shall not be altered or corrupted without the prior written consent of the State; and (7) completion of VHC staff training to implement the information security measures.

In the event the Contractor builds systems according to the Specifications of Work in Attachment A, Contractor shall follow the existing Vermont Health Connect (VHC) control framework during the term of this Agreement including industry standard administrative technical, and physical safeguards and controls consistent with *NIST (National Institute of Standard and Technology) Special Publication 800-53* (Rev.3 or higher) and *Federal Information Processing Standards Publication 200* in accordance with federal regulations governing the use of data on state based insurance exchanges.

Security Breach Reporting: The Contractor acknowledges that in the performance of its obligations under this Contract, it may be a “data collector” pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In addition to the requirements set forth in any Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach the Contractor either suffers or learns of that compromises State Data (including PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device (; loss or theft of printed materials; or failure of security policies (collectively, a “Security Breach”), in accordance with 9 V.S.A. § 2435(b)(2), the Contractor shall notify appropriate State personnel of such Security Breach no later than two (2) business days after becomes aware of the Security Breach.

The Contractor’s report shall identify: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes, HIPAA and/or HITECH) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor’s security obligations or other event requiring notification under applicable law (“Notification Event”), the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume the costs associated with a Security Breach and Notification Event to the extent the Security Breach and Notification Event is the responsibility of the Contractor, including but not limited to, notice, outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

10. In addition to the standard terms and conditions in Attachment C, the parties add the following terms:

Inapplicability of Certain Affordable Care Act Provisions: The State understands that the Contractor is 100% beneficially owned by OptumInsight, Inc., which is 100% beneficially owned by UnitedHealth Group, which also owns 100% of United Healthcare (UHC). In the event that United Health Care (UHC) intends to offer health plans on the Vermont Health Insurance Exchange, subject to applicable State law and regulation, and HHS’ interpretation of the federal law 42 U.S.C. § 18031 (f)(3) and 45 C.F.R. 155.110, the State agrees its selection of health plans to offer on the Health Insurance Exchange will not be affected solely by the

contractual relationship between the State and the Contractor, an Affiliate of UHC. This agreement is expressly subject to (i) HHS' interpretation of the federal law 42 U.S.C. § 18031 (f)(3) and 45 C.F.R. 155.110; and (ii) the eligibility of the Contractor under applicable State law. Further, this Agreement in no way limits the ability of the State of Vermont from determining to exclude the Contractor or its affiliates from participation as an insurance carrier on the State's Health Insurance Exchange for reasons other than this Contract. The State shall seek confirmation from HHS that (1) the eligible entity provisions at 42 U.S.C. § 18031(f)(3) and 45 CFR § 155.110, and (2) the requirements set forth in 45 C.F.R. § 155.215, do not apply to this Agreement. Upon receipt of such confirmation, the State will provide copy of the confirmation to Contractor.

11. In addition to the standard terms and conditions in Attachment C, the parties add the following term:

Price Determination: The parties recognize and agree that the IT services to be provided under this contract are commercial services sold in substantial quantities to the general public based on market prices, and the State has determined that the labor rates provided by the Party are in line with market prices for such services in the commercial marketplace, and are therefore fair and reasonable.

12. In addition to the standard terms and conditions in Attachment C, the parties add the following term:

Award of Agreement: DVHA represents and certifies Contractor has been awarded this contract in accordance with applicable State law and policy.

13. In addition to the standard terms and conditions in Attachment C, the parties add the following terms:

Mitigation of OCIs:

Contractor acknowledges and agrees that, in the performance of this Agreement it may have access to State Confidential Information of a precise nature that is related to the HSE and the VHC ("Inside Information"). Further, Contractor acknowledges and agrees that this access to Inside Information could potentially provide it with a competitive advantage were it to seek to participate in a solicitation to perform additional services for the State related to the HSE. In order to mitigate this potential conflict of interest or the appearance of a conflict of interest, Contractor shall maintain a system of policies, procedures and safeguards (collectively "Protective Measures"), to prevent the inadvertent transfer of Inside Information between Contractor personnel assigned to perform Services under this Contract and Contractor personnel engaged in the development of the proposal response for the Integrated Eligibility procurement where Inside Information could provide Contractor or its affiliates with an unfair competitive advantage. Protective Measures shall include but are not limited to the following: Identifying individuals who are engaged in the performance of this contract who may have access to Inside Information; establishing directives that such individuals only use Inside Information for purposes of carrying out the Contract and that they do not communicate Inside Information to any other Contractor teams or personnel engaged in State of Vermont projects or pursuits; and establishing a secure, data environment, such as a secure SharePoint, to house all such Inside Information utilized by Contractor to perform the Contract. Contractor's Protective Measures shall be designed to ensure that all Inside Information is only accessible to Contractor Personnel on a program specific need-to-know basis and to prevent the transmission of Inside Information to any other Contractor Personnel. The Protective Measures will be put

in place upon execution of this Agreement and shall remain in place until the award of the Integrated Eligibility contract.

By executing this contract, and assuming Contractor's strict compliance with the Contractor's foregoing agreement regarding the institution of Protective Measures, the State has determined that the Party's performance of the Services does not create a current Organizational Conflict of Interest ("OCI"). In the event Contractor subsequently becomes aware of any OCI, Contractor will promptly notify the State, propose a mitigation plan, if needed, and will not proceed until mutually acceptable means are taken to mitigate the OCI where the parties jointly determine that such a mitigation plan is required.

14. In addition to the standard terms and conditions in Attachment C, the parties add the following terms:

Force Majeure: The failure of either party to perform under this Agreement shall be excused, and shall not be cause for termination, to the extent such failure to perform is due to the extent a party is hindered or prevented from complying therewith because of labor disturbances (including strikes or lockouts) outside of the non-performing party's control, acts of war, acts of terrorism, vandalism or other aggression, acts of God, fires, storms, accidents, governmental regulations outside of a party's control, failure of Internet access or service, or any other cause whatsoever beyond a party's control.

15. In addition to the standard terms and conditions in Attachment F, subsection 10, the parties add the following terms:

Intellectual Property/Work Product Ownership

This Agreement is in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, and is subject to, and incorporates by reference, 45 C.F.R. 74.36 and 45 C.F.R. 92.34 governing rights to intangible property. The Contractor must deliver all intangible property, including but not limited to, intellectual property, to the State in a manner that ensures the Centers for Medicare & Medicaid Services, an Agency of the Department of Health and Human Services, obtains the rights required by the above-cited regulations.

The State shall retain all right, title and interest in and to all data content provided by the State, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder ("**State Information**"), and all other rights, tangible or intangible (collectively, "**State Intellectual Property**"). Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not

originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein. Without any additional cost to the State, Contractor shall promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State to perfect, preserve, enforce, register and record its rights in and to all Work Product. Contractor hereby appoints the State, through its designated signatory, as Contractor's agent and Attorney-in-Fact to execute, deliver and file, as and if necessary, any and all documents necessary to give effect to the provisions of this Section and to take all actions necessary therefore, in Contractor's stead and name, with the same force and effect as if executed, delivered and/or filed by Contractor.

"Work Product" means any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor specifically for this Contract. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with this Contract, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during the Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Technology, provided the State shall be granted a non-exclusive license to any such Contractor Technology that is incorporated into Work Product solely for the State's internal use and used solely as part of the Work Product. The license to Contractor Technology may be subject to applicable fees on such terms as the parties may agree.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Technology.

State hereby grants to Contractor an irrevocable, perpetual, world-wide license to use, have used, improve, further develop and sub-license intangible Work Product developed under this Agreement for any legal business purpose. State may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under this Agreement.

Contractor shall report to the State, promptly and in written detail, any notice or claim of copyright infringement received by Contractor with respect to all deliveries under this Agreement.

To the extent Contractor delivers any intangible property developed with private funding or otherwise developed outside the scope of this Agreement, the State will have Restricted Rights (1) if such property is non-commercial software; (2) the vendor's standard commercial license, if such property is commercial software; and (3) limited rights, if such property is other than software. Restricted Rights means that the software may not be used, reproduced, or disclosed except that it may be: (1) used or copied for use with the computer(s) for which it was

acquired; (2) used or copied for use with a backup computer if any computer for which it was acquired is inoperative; (3) reproduced for safekeeping (archives) or backup purposes; (4) modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights; (5) disclosed to and reproduced for use by support service contractors or their subcontractors for one of the purposes described in (1) through (4), provided that the State provides prior notice to Contractor and obtains a non-disclosure agreement with the recipients; and (6) used or copied for use with a replacement computer.

Limited Rights means that the property may be reproduced and used by the State with the express limitation that they will not, without the written permission of Contractor, be used for purposes of manufacture nor disclosed outside the State government.

When feasible, Contractor shall affix an appropriate legend to intangible property delivered under the contract to reflect whether it is (1) developed under the contract with contract funds, entitling the State to a license for State purposes; (2) developed outside the contract or with private funds, and subject to Restricted Rights or Limited Rights; (3) commercial software subject to the terms of a commercial software license.

In performing the work, Contractor will use its proprietary intangible property, including tools and information that it will not deliver under the contract. The State obtains no rights in any intangible property that is not a deliverable under the contract.

To the extent that the Contractor delivers any commercial computer software under this agreement, whether such software is owned by the Contractor or a third party, the State shall receive the licensor's standard commercial license rights with respect to such software.

16. **State Facilities.** During the term of this Contract, the State may make available to Contractor space in any State facility applicable to the services set forth in Attachment A hereto ("Services"), subject to the conditions that Contractor; (i) shall only use such space solely and exclusively for and in support of the services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of the commencement of this Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis with no warranties whatsoever.

17. **Warranties.** The Contractor represents, warrants and covenants that:

- i. The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- ii. There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably


- be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- iii. The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
 - iv. All deliverables will be free from material errors and shall perform in accordance with the specifications therefor at the time of delivery.
 - v. The Contractor owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Contract and none of the deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
 - vi. Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. The Contractor has adequate resources to fulfill its obligations under this Contract.
 - vii. Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
18. **Continuity or Performance.** In the event of a dispute between the contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.
19. **Independent Review.** The Contractor acknowledges and agrees that the State is required pursuant to 3 V.S.A. § 2222 to obtain an independent expert review of this contract and the services to be rendered hereunder, which review shall be commenced as soon as practicable, after the Effective Date of this contract. Such review will include, as required by law: (A) an acquisition cost assessment; (B) a technology architecture review; (C) an implementation plan assessment; (D) a cost analysis and a model for benefit analysis; (E) a procurement negotiation advisory services contract; and (F) an impact analysis on net operating costs for the Agency carrying out the activity. Upon completion of the review, and upon the State's request, the Contractor shall meet with the State to discuss the results and the Contractor will cooperate with the State to address any aspects of the contract or services that are identified in the review as the State deems necessary. The Contractor acknowledges and agrees that the Contract and/or applicable Task Orders may be amended to address the issues necessary in the review on such terms as the parties may agree.
20. **No Offshore Services.** Contractor shall not conduct business operations services involving State Data and federal data governed by privacy laws and regulations ("Protected Information") in connection with this Contract offshore. At no time shall the Contractor maintain, use, transmit, or cause to be transmitted Protected Information outside the United States and its territories.

**STATE OF VERMONT
AMENDMENT TO PERSONAL SERVICES CONTRACT
OPTUMINSIGHT, INC.**

**PAGE 23 OF 23
CONTRACT #26801
AMENDMENT #1**

Approval:

Assistant Attorney General:

 E-SIGNED by Jaye Johnson
on 2014-08-13 14:31:50 GMT

Date: August 13, 2014

State of Vermont – Attachment D
Revised AHS – 12-08-09

Expedited Review Comments for Optum Amendment 1

Kate Jones	
No further comments at this time.	
Jill Gould	
Issue/Concern	Response
Reference problem on #2. I don't know what the last part of the sentence is supposed to mean? Replace #6 or page 6 or what?	Corrected.
Emily Byrne	
Issue/Concern	Response
Part two of the amendment says "Delete Stream 4 section" and then the detail says "stream1", but there is already a stream. The label should be updated to "Stream 4".	Corrected.
Part 3 where you delete section one of attachment B needs to have the maximum amount of the contract needs to be updated to equal the new maximum.	Corrected.
Jaye Johnson	
Issue/Concern	Response
All amendments need to contain this language: <u>Taxes Due to the State.</u> Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.	Replaced in attachment C.
As to the extension of term for the Stream 3 Task Orders, these do not pass the ABC Test and so we originally relied on the 90 day "emergency services" exception in 3 VSA 342: (F) The need for services is urgent, temporary or occasional, such that the time necessary to hire and train employees would render obtaining the services from state employees imprudent. Such contract shall be limited to 90 days' duration, with any extension subject to review and approval by the secretary of administration.	Memo from Agency of Administration signed and attached.

My original approval is only good for 90 days (through September 9) . In order for me so certify this amendment under 3 VSA 311(10), I will need Secretary of Administration approval of the extension for those services in order to satisfy this requirement. I will need approval memo from AoA before I can sign off.	
Diane Nealy	
Issue/Concern	Response
No further comments at this time.	
Dan Smith	
Issue/Concern	Response
I get a cumulative change of 265%, not 166%. The increase (9.4M) represents 166% of the original value, but I think the overall cumulative change is higher. It depends to some degree on interpretation, but the final value of the contract is 2.65 times the original value. Maybe I'm misinterpreting the intent here.	<p>The following calculation was used to get 166%:</p> $15,133,939.00 - 5,690,242.00 = 9,443,697.00$ $9,443,697.00 / 5,690,242.00 = 1.6596$ $1.6596 \times 100 = 166\%$
The amendment states that it is changing the duration to 12/31/2014, but that is the same as the period of performance in the original contract.	The term isn't changing. Corrected.
"The funding for this amendment will be covered by Federal Funding Participation complies with all mandatory provisions of AOA Bulletin 3.5". It seems like two sentences got wrapped together, or we're missing an "and" before "complies with".	Corrected.
Richard Boes	
Issue/Concern	Response
As we talk about lessons learned, we've learned that having only one of multiple stakeholders making decisions on project management and IT does not always get us the desired outcome. Request to include other stakeholders in this language.	Language added to reflect the current review process the TO's are undergoing.
Contract Administrator Required Edit	
Issue/Concern	Response
AHS updated Attachment C on 6/9.	Attachment replaced.